STATUTORY RULES OF NORTHERN IRELAND

2002 No. 141

FOOD

Food (Jelly Confectionery) (Emergency Control) Regulations (Northern Ireland) 2002

Made . . . . . 9th April 2002

Coming into operation . . 11th April 2002

The Department of Health, Social Services and Public Safety, being a Department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by the said section 2(2) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Food (Jelly Confectionery) (Emergency Control) Regulations (Northern Ireland) 2002 and shall come into operation on 11th April 2002.

Interpretation

2.—(1) In these Regulations—

"the Order" means the Food Safety (Northern Ireland) Order 1991(**c**), and, subject to paragraph (2), any expression used both in these Regulations and in the Order has the meaning it bears in the Order;

"commercial operation" does not include exporting;

"the Commission Decision" means Commission Decision 2002/247/EC suspending the placing on the market and import of jelly confectionery containing the food additive E425: Konjac(**d**);

"controlled jelly confectionery" means any jelly confectionery which contains E425: Konjac: (i) Konjac gum (ii) Konjac glucomannane and which is intended for human consumption;

"the Department" means the Department of Health, Social Services and Public Safety; and

"jelly confectionery" includes jelly mini-cups.

(2) Any term used both in these Regulations and in the Commission Decision has the same meaning as in the Commission Decision.

Prohibitions

3.—(1) No person shall carry out any commercial operation with respect to any controlled jelly confectionery.

(2) For the purposes of paragraph (1), any jelly confectionery which contains E425: Konjac (i) Konjac gum (ii) Konjac glucomannane shall be presumed until the contrary is proved to be controlled jelly confectionery.

(3) No person shall use E425: Konjac (i) Konjac gum (ii) Konjac glucomannane in the manufacture of any jelly confectionery which is intended for human consumption.

(4) For the purposes of paragraph (3), any jelly confectionery shall be presumed until the contrary is proved to be intended for human consumption.

(**a**) S.I. 2000/2812
(**b**) 1972 c. 68
(**c**) S.I. 1991/762 (N.I.7) as amended by S.I. 1996/1633 (N.I. 12)
(**d**) O.J. No. L84, 28.3.2002, p. 69

(5) Any person who knowingly contravenes paragraph (1) or (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

Enforcement

4.—(1) These Regulations shall be enforced and executed by each district council within its district.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an authorised officer shall—

(*a*) have the same powers of entry as are bestowed on an authorised officer by Article 33 of the Order for purposes connected with the Order or Regulations or orders made under the Order; and

(*b*) be subject to the same obligations as regards the procurement of samples under Article 29 of the Order as are imposed on an authorised officer by regulations 6 to 8 of the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991(**a**) (in these Regulations referred to as "the 1991 Regulations"), with the modification that any reference in those regulations to Article 29 of the Order shall be deemed to be a reference to that Article as applied by regulation 5(5).

(3) Each district council shall give such assistance and information to the Department and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

Application of various provisions of the Order

5.—(1) The following provisions of the Order shall apply for the purposes of these Regulations and any reference in those provisions to the Order shall be construed for the purposes of these Regulations as a reference to these Regulations—

(*a*) Articles 2(4) and 3 (extended meaning of "sale" etc.);

(*b*) Article 19 (offences due to fault of another person);

(*c*) Article 30 (analysis, etc., of samples procured by an authorised officer of a district council) with the further modifications that—

(i) the reference to "Article 29" in paragraph (1) shall be deemed to be a reference to that Article as applied by regulation 5(5), and

(ii) in the definition of "sample" in paragraph (9), the reference to "regulations under Article 32" shall be deemed to be a reference to regulation 4(2)(*b*);

(*d*) Article 34 (obstruction, etc., of officers);

(*e*) Article 36(1) (punishment of offences) in so far as it relates to offences under Article 34(1) and (2) as applied by sub-paragraph (*d*).

(2) Subject to paragraph (3), Article 8 of the Order (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows—

"**8.**—(1) An authorised officer may at all reasonable times inspect any jelly confectionery which—

(*a*) has been sold or is offered or exposed for sale; or

(*b*) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Paragraphs (3) to (8) shall apply where, whether or not on an inspection carried out under paragraph (1), it appears to an authorised officer that—

(*a*) any person has carried out commercial operations with respect to controlled jelly confectionery, in contravention of regulation 3(1) of the Food (Jelly Confectionery) (Emergency Control) Regulations (Northern Ireland) 2002, or

(*b*) any person has used E425: Konjac: (i) Konjac gum (ii) Konjac glucomannane in the manufacture of any jelly confectionery which is intended for human consumption, in contravention of regulation 3(3) of the aforesaid Regulations.

(**a**) S.R. 1991 No. 198, to which there are amendments not relevant to these Regulations

(3) The authorised officer may either—

(*a*) give notice to the person in charge of the jelly confectionery that, until the notice is withdrawn, the jelly confectionery or any specified quantity of it—

(i) is not to be used for human consumption, and

(ii) either is not to be removed or is not to be removed except to some place specified in the notice; or

(*b*) seize the jelly confectionery and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (*a*) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where the authorised officer exercises the powers conferred by paragraph (3)(*a*), he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that there has been no contravention of regulation 3(1) or (2) of the aforesaid Regulations in relation to the jelly confectionery and—

(*a*) if he is so satisfied, shall forthwith withdraw the notice;

(*b*) if he is not so satisfied, shall seize the jelly confectionery and remove it in order to have it dealt with by a justice of the peace.

(5) Where an authorised officer exercises the powers conferred by paragraph (3)(*b*) or (4)(*b*), he shall inform the person in charge of the jelly confectionery of his intention to have it dealt with by a justice of the peace and—

(*a*) any person who under regulation 3(5) of the aforesaid Regulations might be liable to a prosecution in respect of the jelly confectionery shall, if he attends before the justice of the peace by whom the jelly confectionery falls to be dealt with, be entitled to be heard and to call witnesses; and

(*b*) that justice of the peace may, but need not, be a member of the court before which any person is proceeded against for an offence consisting of a contravention of regulation 3(1) or (3) of the aforesaid Regulations in relation to that jelly confectionery.

(6) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any person has contravened regulation 3(1) or (3) of the aforesaid Regulations in relation to any jelly confectionery falling to be dealt with by him under this Article, he shall condemn the jelly confectionery and order—

(*a*) the jelly confectionery to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and

(*b*) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the jelly confectionery.

(7) If a notice under paragraph (3)(*a*) is withdrawn, or the justice of the peace by whom any jelly confectionery falls to be dealt with under this Article refuses to condemn it, the district council shall compensate the owner of the jelly confectionery for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Department; and the provisions of the Arbitration Act 1996(**a**) shall apply accordingly.

(9) For the purposes of—

(*a*) paragraph (2)(*a*), any jelly confectionery which contains E425: Konjac (i) Konjac gum (ii) Konjac glucomannane shall be presumed until the contrary is proved to be controlled jelly confectionery; and

(*b*) paragraph (2)(*b*), any jelly confectionery shall be presumed until the contrary is proved to be intended for human consumption.".

(3) The expressions "controlled jelly confectionery", "jelly confectionery" and "for human consumption", which are used in Article 8 of the Order so far as it applies for the

(**a**) 1996 c. 23

purposes of these Regulations by virtue of paragraph (2), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

(4) Articles 2(4) and 3 of the Order (extended meaning of "sale" etc.) shall apply in relation to Article 8 of the Order so far as it applies for the purposes of these Regulations by virtue of paragraph (2).

(5) Article 29 of the Order (procurement of samples) shall apply for the purposes of these Regulations with the modifications that—

(*a*) for paragraph (*b*)(ii) there shall be substituted the following provision—

"(ii) is found by him on or in any premises which he is authorised to enter by virtue of regulation 4(2) of the Food (Jelly Confectionery) (Emergency Control) Regulations (Northern Ireland) 2002;";

(*b*) paragraph (*c*) shall be omitted; and

(*c*) for "any of the provisions of this Order or of regulations or orders made under it" in paragraph (*d*) there shall be substituted "the Food (Jelly Confectionery) (Emergency Control) Regulations (Northern Ireland) 2002".

(6) Regulation 9(1) of the 1991 Regulations shall apply for the purposes of these Regulations as if it read as follows—

"(1) Where a sample procured under Article 29 of the Order as applied by regulation 5(5) of the Food (Jelly Confectionery) (Emergency Control) Regulations (Northern Ireland) 2002 has been analysed or examined in pursuance of regulation 4(2)(*b*) of those Regulations, the owner shall be entitled on request to be supplied with a copy of the certificate of analysis or examination by the district council.".

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 9th April 2002.

(L.S.)

Denis McMahon
A Senior Officer of the Department of Health,
Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement Commission Decision 2002/247/EC suspending the placing on the market and import of jelly confectionery containing the food additive E425: Konjac (O.J. No. L84, 28.3.2002, p. 69).

The Regulations—

(*a*) prohibit, first, the carrying out of commercial operations with regard to jelly confectionery which contains the food additive E425: Konjac and which is intended for human consumption and, second, the use of that additive in the manufacture of jelly confectionery which is intended for human consumption (*regulations 2 and 3*);

(*b*) specify the enforcement authority and make consequential provisions relating to the execution and enforcement of the Regulations by that authority (*regulation 4*); and

(*c*) apply, with modifications, provisions of the Food Safety (Northern Ireland) Order 1991 (*regulation 5*).

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